

TENTATIVE RULINGS for CIVIL LAW and MOTION

April 29, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: Capital One Bank v. Alistar
Case No. CV G 09-1846

Hearing Date: April 29, 2010 Department Fifteen 9:00 a.m.

The first amended complaint that the Clerk erroneously filed on November 30, 2009, is **STRICKEN** on the Court's own motion. (Code Civ. Proc., § 472.) The Clerk is directed to strike this pleading.

Plaintiff's motion for leave to amend the complaint is **DENIED WITHOUT PREJUDICE**. (Cal. Rules of Court, rule 3.1324(a).) This matter was last before the Court on March 26, 2010. The court day before that hearing, a tentative ruling was posted, informing the plaintiff that a copy of the proposed amended complaint was not submitted with the plaintiff's motion, as required under the Rules of Court. Plaintiff's counsel requested a continuance to April 29, 2010. Plaintiff still has not filed a proposed amended complaint.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Fonseca v. IndyMac Bank, F.S.B. et seq.
Case No. CV CV 09-3182

Hearing Date: April 29, 2010 Department Fifteen 9:00 a.m.

Defendants OneWest Bank, F.S.B and Mortgage Electronic Registration Systems, Inc.'s unopposed demurrer to the complaint is **SUSTAINED AS FOLLOWS**: Defendants' demurrer to the first, second, eighth, and tenth causes of action is **SUSTAINED WITHOUT LEAVE TO AMEND**. Defendants' demurrer to the third, fourth, fifth, sixth, seventh, and ninth causes of action is **SUSTAINED WITH LEAVE TO AMEND**. Plaintiff fails to state sufficient facts to constitute a cause of action against defendants. (Code Civ. Proc., §§ 338, subd. (d), 430.10, subd. (e) & 761.020; Civ. Code, §§ 1670.5 & 2923.5; Fin. Code, §§ 4970 *et seq.*; 12 C.F.R. § 560.2; *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 635; *Farner v. Countrywide Home Loans* (S.D. Cal. Jan 26, 2009) 2009 WL 189025; *Tarmann v. State Farm Mutual Auto Ins. Co.* (1991)

2 Cal.App.4th 153, 157; *Bartley v. California Ass'n of Realtors* (1980) 115 Cal.App.3d 930, 934-935; *Kays v. Bundy* (1949) 92 Cal.App.2d 497, 499; *Murillo v. Aurora Loan Services, LLC* (N.D.Cal. July 17, 2009) 2009 WL 2160579; *Emery v. Visa Int'l Serv. Ass'n* (2002) 95 Cal.App.4th 952, 960.)

Plaintiff shall file his amended complaint, if any, **by May 12, 2010**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **HSBC Bank USA, National Association, as Trustee v. Bojorquez**
Case No. CV UD 10-655

Hearing Date: **April 29, 2010** **Department Fifteen** **9:00 a.m.**

Defendants' motion to set aside the entry of default and default judgment is **DENIED**. (Code Civ. Proc., § 473.5, subd. (b).) Defendants failed to file a declaration in support of their motion. The statements made by Defendant Vanessa Bojorquez in the memorandum of points and authorities cannot be considered since it does contain a valid jurat. Even if the Court could consider the statements made in the memorandum of points and authorities, such statements do not support granting relief. Section 473.5 provides in part that when service of a summons **has not resulted in actual notice to a party in time to defend that action** and default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. (Code Civ. Proc., § 475.3, subd. (a).) Defendant Vanessa Bojorquez states that she received the summons and complaint on March 20, 2010. Therefore, Defendants cannot show that service of the summons did not result in actual notice in time to defend the action.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **In re Trinidad Murillo (Petition of J.G. Wentworth Originations, LLC)**
Case No. CV PT 10-229

Hearing Date: **April 29, 2010** **Department Fifteen** **9:00 a.m.**

J.G. Wentworth Originations, LLC's petition to approve transfer of structured settlement payments is **DENIED**. In October, 2009, the Governor signed Senate Bill 510 which made various changes to the laws governing transfers of structured settlement payments. These changes became effective on January 1, 2010.

The written disclosure statement that the petitioner provided to Trinidad Murillo (Exhibit B to the petition) does not contain all of the advisements required under Insurance Code section

10136, subdivision (b). The Purchase Contract (Exhibit A to the petition) does not contain the statement required under Insurance Code section 10136, subdivision (c)(1).

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.